COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 336 of 2006
(Old FAFO No. 1043 of 1995)

Jagat Singh S/O Laxman Singh, R/O Wild Life Institute of India, Dehradun, District Dehradun. (Claimant)

… **Appellant.**

Versus

1. Shamshad Ali S/O Shri Bundoo, R/O 541, South Khalapur, Muzaffarnagar.
2. National Insurance Company, Shamli Branch through its Divisional Manager, Muzaffarnagar.

…. **Respondents.**

Sri Rajendra Dobhal, learned counsel for the appellant.
Sri D.S. Patni, Adv., learned counsel for the Insurance Company-respondent.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

Date July 20, 2006.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988, ***(in short the Act)*** against the judgment and Award dated 8-8-1995 passed in M.A.C.T. Case No. 200 of 1993, Jagat Singh Vs. Shamshad Ali and another, by Motor Accident Claims Tribunal/Special Judge (E.C.Act) Dehradun ***(in short the Tribunal),*** whereby the learned Tribunal has allowed the claim petition and has awarded Rs.2,26,000/- as compensation payable by the Insurance Company within a period of 1,1/2 month from the date of order. In case of default, rider of interest @ 12% per annum was put from the date of order. Aggrieved, the claimant has come up in appeal for enhancement of compensation amount.

Relevant facts necessary for a just decision of the appeal are that the claimant-appellant filed a claim petition for compensation of Rs. 5,77,300/- under Section 166 of the Act in respect of injuries suffered by him in a vehicular accident, which occurred on 1-12-1992 while he was going to his office Wild Life Institute Dehradun

involving offending Truck No. UHQ-687, which was being driven rashly and negligently by its driver. The truck hit the claimant's bicycle from behind and dragged him up-to about 30 yards. The claimant was brought to Gautam Nursing Home and was admitted there and subsequently, the injured was referred to Safdar Jang Hospital New Delhi for treatment, who had suffered a number of severe injuries on his body and iron rod was inserted in the right leg of the claimant. The injured had incurred amount of Rs. 60,000/- on his treatment and towards future treatment, sum of Rs. 10,000/- is required to be spent. He also incurred sum of Rs. 7,000/- towards special diet and recovery. It was also stated that the claimant remained leave without pay from December 1992 till the date of filing of claim petition and thus he was made to suffer financial loss of Rs. 11,600/-. It was also stated that the claimant has to repay loan of Rs.40,000/- towards treatment expenses to his department. The claim petition was preferred for grant of compensation of Rs. 5,70,000/- towards general and special damages. The offending truck was owned by Shamshad Ali and it was duly insured with the National Insurance Company.

The O.P.No.1, owner of the vehicle did contest the claim petition. The insurer filed its written statement and contested the claim petition on the ground inter-alia that the liability of the insurance company is subject to the provisions of Section 64 VB of the Insurance Act and there was violation of policy conditions, therefore, the insurer was not liable for compensation. Plea of validity of driving licence and valid route permit was also taken.

Learned Tribunal framed necessary issues, recorded the evidence led by the rival parties, heard them and after perusing he material on record, it came to the conclusion that on 1-12-1992, the accident in question resulting into grievous injuries to the injured occurred due to rash and negligent driving by the driver of Truck No. UHQ-687. It was further held that there was no violation of policy conditions and the issue on that point was answered against the insurance company. The learned Tribunal observed that on the issue

of validity of driving licence the insurer failed to lead any evidence to show that the offending vehicle was being driven by a person not having a valid driving licence, therefore, it was held that the driver of the truck was having a valid driving licence. Ultimately, the learned Tribunal after assessing the evidence on the quantum of compensation found the injured entitled to total compensation of Rs. 2,26,000/- arrived at on different counts as detailed at page no. 15 of the impugned award and accordingly granted compensation in favour of the claimant as mentioned earlier.

The award passed by the learned Tribunal has been assailed mainly on the ground that the claimant was entitled to entire compensation as claimed but the learned Tribunal has reduced the compensation amount without any basis in an arbitrary manner and refusal of interest @ 18% per annum is also not justified.

We have heard rival contentions of both the parties and perused the entire material on record including the impugned judgment and award.

At the outset, we may point out that so far as the award of interest @ 12% per annum is concerned, the same is fastened on the person to the pay the decretal amount at the earliest. The interest at any particular rate cannot be claimed by the claimant as of right, rather it is discretionary power to be exercised by the Tribunal considering the facts and circumstances of the case as well as prevailing bank rate of interest. Presently, the bank rate of interest has shown declining trend. A perusal of the record shows that the learned Tribunal has awarded interest on default of payment of decretal amount within a period of 1,1/2 month. The accident, admittedly, occurred in the year 1992 and the claim petition was filed in the year 1993. The award was made on 8-8-1995. In the facts and circumstances of the case, we are of considered view that instead of award of penal interest, it will be in the fitness of things to award simple interest @ 6% per annum from

the date of filing of claim petition till the date of payment. The contention on the point of award of interest is accordingly answered.

So far as the contention that the learned Tribunal has not considered the evidence led by the claimant injured for computing the compensation is concerned, the contention of the appellant-claimant is misconceived. In the claim petition, the injured had mentioned that he incurred expenses on his treatment worth Rs. 60,000/- and Rs. 10,000/- were claimed towards future medical expenses, Rs. 7,000/- towards special diet for early recovery and Rs. 11,600/- towards loss of salary. This comes in all Rs. 88,600/-. The learned Tribunal, on the other hand, has assessed compensation of Rs. 1,78,787, Rs. 15,300/- towards loss of salary, Rs. 25,000/- towards pain and suffering, 5,000/- towards future contingencies and Rs. 2,000/- for conveyance charges to be incurred in future with a total of Rs. 2,26,087/- and rounded the figure at Rs. 2,26,000/-. In the facts and circumstances of the case, even from a remote consideration it cannot be inferred that the findings of the learned Tribunal is illegal or arbitrary. A perusal of the testimony of the injured itself goes to show that the claimant has been continuing in service. It is well settled that compensation under the provisions of the Act cannot be taken as bonanza. The Court is required to assess the compensation as just and proper.

An imaginary ground has been taken by the claimant that he could have become Scientist, had he not suffered permanent disability in the vehicular accident. It has not been shown by the claimant-injured either before the Tribunal or this Court in appeal, that he did possess the requisite qualification to be promoted to that post. Moreover, judicial notice can also be taken of the prevailing Government Orders by which a Government employee is entitled to get two promotional scales during 24 years span of his continuous and satisfactory service. In this view of the matter, when the claimant is continuing in service. Therefore, in any view of the matter, the award of compensation of Rs. 2,26,000/- awarded by the learned Tribunal cannot be treated as unfair and improper. The learned counsel for the

appellant has miserably failed to indicate anything so as to warrant interference in the impugned award.

In view of the discussion above, we do not find any infirmity or illegality in the impugned award, which is liable to be upheld. The appeal has no merit and must fail.

The appeal preferred by the claimant is hereby dismissed on merit. However, the judgment and award, under appeal, is modified to the extent that the claimant-injured shall be entitled to simple interest @ 6% per annum on the compensation amount of Rs. 2,26,000/- from the date of filing of claim petition till the date of payment. No order as to costs.

20-07-2006 **(B.S. Verma, J.)** **(P.C. Verma, J.)**

RCP